

REMARKS

This Amendment is being filed in response to the Final Office Action mailed on August 4, 2011, which has been reviewed and carefully considered. By means of the present amendment, independent claims 15 and 30 have been amended to include the features of canceled claims 36 or 41. Accordingly, no new issues requiring a new search have been introduced and entry of the present amendment is respectfully requested. Reconsideration and allowance of the present application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 15, 18, 19, 30 and 33-35 are pending in the application, where claim 15 and 30 are independent.

In the Final Office Action, claims 1-8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,708,037 in view of U.S. Patent No. 6,973,062 (Han) and U.S. Patent No. 5,638,412 (Blakeney). The Examiner indicated that a terminal disclaimer may be used to overcome this rejection. This rejection is respectfully traversed, particularly in view of the present amendments to the claims. However, it is respectfully submitted that Applicants will consider filing a terminal disclaimer, if necessary in view of any allowable claims, upon indication that the present application is otherwise allowable or includes allowable claims.

In the Final Office Action, claims 15, 18, 19, 30, 33-36 and 41 are rejected under 35 U.S.C. §103(a) over U.S. Patent No. 6,973,062 (Han) in view of U.S. Patent No. 5,638,412 (Blakeney). This rejection is respectfully traversed. It is respectfully submitted that the

claims are patentable over Han and Blakeney for at least the following reasons.

On page 8, last paragraph of the Final Office Action, in rejecting claims 36 and 41, it is alleged that column 4, lines 1-67 of Han disclose or suggest that "the indicated highest available data rate of at least one available random access channel is lower than a highest data rate that could be made available to the at least one random access channel, based on a potential future demand for capacity," as recited in amended independent claims 15 and 30. In particular, it is alleged that this feature is disclosed or suggested in column 4, lines 1-67 of Han because "the highest class codes may not be available, thus are not indicated as available in the message sent in figure 3." (Final Office Action, page 8, last two lines; emphasis added)

These allegations are respectfully traversed. Assuming, arguendo, that Han discloses that the highest class codes are not indicated as available in a message when indeed such highest class codes are not available, such a recitation does not disclose or suggest to indicate a lower than the highest available rate, even when the highest rate is available, as recited in independent claims 15 and 30.

It is respectfully submitted that Han does not disclose or suggest the present invention as recited in independent claim 15, and similarly recited in independent claims 30 and 16 which, amongst other patentable elements, recites (illustrative emphasis provided):

wherein the indicated highest available data rate of at least one available random access channel is lower than a highest data rate that **could be made available** to the at least one random access channel, **based on a potential future demand for capacity**.

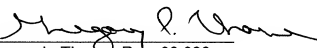
Han does not even disclose or suggest indicating a lower than the highest data rate even when the highest data rate could be made available, let alone disclosing or suggesting doing so based on a potential future demand for capacity. Rather, Han discloses that the highest class codes are not indicated as available when the highest class codes are not available. Blakeney is cited to allegedly show other features and does not remedy the deficiencies in Han.

Accordingly, it is respectfully requested that independent claims 15 and 30 be allowed. In addition, it is respectfully submitted that claims 18, 19 and 33-35 should also be allowed at least based on their dependence from independent claims 15 and 30, as well as for the separately patentable elements contained in each of the claims. Accordingly, separate consideration of each of the dependent claims is respectfully requested.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

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